Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.

No. 85-1684

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

NICHOLAS G. COLLETTI and
BARBARA COLLETTI
Petitioners

v.

THE COUNTY OF PRINCE WILLIAM, VIRGINIA
A Body Politic
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

PFITZNER & MORLEY
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QUESTION PRESENTED

Should the Appellants, Nicholas G. Colletti and Barbara Colletti be required to pay their county personal property tax assessment in something other than gold or silver coin?

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NICHOLAS G. COLLETTI and
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Petitioners

v.

THE COUNTY OF PRINCE WILLIAM, VIRGINIA

A Body Politic

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

The Petitioners, Nicholas G. Collett: and Barbara Colletti, respectfully pray that a writ of certiorari issue to review the Judgment and Opinion of the Supreme Court of Virginia entered January 15, 1986 which refused the Petitioner's appeal.

OPINION BELOW

The denial of appeal appears in Appendix "A" hereto.

JURISDICTION

The judgment of the Virginia Supreme Court was entered January 15, 1986, and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C., Section 1257(3).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

United States Constitution provisions

Article I Section 8
Article I Section 10
Article VI
10th Amendment

STATEMENT OF FACTS

Appellee, by counsel and Appellant, Nicholas G. Colletti, with counsel, appeared for trial upon the Warrent in Debt and Answer and Grounds of Defense filed in the Circuit Court of Prince William County on March 26, 1985 on the issue of non-payment of Appellants 1983 Personal Property taxes.

Appellant, Nicholas G. Colletti, appeared in the Circuit Court of Prince William County on March 26, 1985, and the Appellee through its witness, Mrs. Lyon, Cashier Supervisor, stated that she assessed the Appellants business personal property tax on a cost basis with a yearly percentage deduction for depreciation. Mrs. Lyon also stated that she assessed the Appellants automobiles using the N.A.D.A. Official Used Car Guide. In both assessments, Mrs. Lyon stated she used Section 58.1-3503 of the Code of Virginia in arriving at the assessments due. On

cross-examination, Mrs. Lyon admitted that she did not assess any of the aforementioned property at it's fair market value and that the N.A.D.A. Official Used Car Guide does not assume responsibility for its accuracy as to the value of data contained therein.

At the conclusion of the Appellee's case, the Appellants moved to strike Appellee's evidence on the following grounds, to-wit: 1) that Section 58.1-3503 of the Code of Virginia was not effective until January 1, 1985 and therefore could not be used on a basis for the Appellants 1983 tax assessments; and 2) that the cost basis and the disclaimer in the N.A.D.A. Official Used Car Guide violates Article X, Section 2 of the Constitution of Virginia which reads in part, "All assessments of real estate and tangible personal property shall be at their fair market value, to be ascertained and prescribed by law." Said motion was denied by the Court.

It was at this point in the case that the right claimed under the United States Constitution was first claimed and this gives This Court jurisdiction to review the judgment on writ of certiorari.

Appellant Nicholas G. Colletti, testified that he did not object to the payment of taxes but cited Article 1; Section 10 of the Constitution of the United States which reads in part, "No state shall...make any thing but gold or silver coin a tender in payment of debts..." The Appellant, Nicholas G. Colletti, further testified that the Federal Reserve Notes which are presently circulating as currency are not redeemable for gold or silver. Therefore, the Appellant, Nicholas G. Colletti, testified that he cannot pay his personal property tax assessment due to it being in conflict with Article 1; Section 10 of the Constitution of the United States.

At the conclusion of the case, Appellant, Nicholas G. Colletti, by counsel, renewed the Motion to Strike the evidence which was denied. Both counsel then made final argument and the Court entered the Judgment Order of May 22, 1985 which granted judgment for the County of Prince William.

As a final point, Counsel for the Appellant, argues that the written statement of facts filed and made a part of the record should not have been corrected pursuant to Rule 5:11 of the Rules of the Supreme Court of Virginia.

Counsel for Appellants excepted to the rulings of the court on the grounds that they were contrary to the Commonwealth of Virginia Constitution, the United States Constitution and the Code of Virginia, 1950 as amended.

REASON FOR GRANTING THE WRIT

I

THIS PETITION PROVIDES THIS COURT THE OPPORTUNITY TO REQUIRE STATE (AND LOCAL) TAXING AUTHORITIES TO CONFORM TO ARTICLE I, SECTION 10 OF THE UNITED STATES CONSTITUTION BY PROHIBITING THE STATE (OR LOCALITY) FROM DECLARING ANYTHING BUT GOLD OR SILVER COIN A TENDER OF DEBTS.

The first paragraph of Article I; Section 10 of the United States Constitution states in part applicable to this case as follows, to-wit:

> "No state shall. . . make any Thing but gold and silver Coin a Tender in Payment of Debts; . . .

Petitioner states that he does not object to the payment of these taxes in question, but due to the prohibition of the United States Constitution as stated above he cannot pay this personal property tax assessment without violating the United States Constitution. Petitioner further argues that, pursuant to Article VI of the United States Constitution, the Constitution becomes the Supreme Law of the Land and all Judicial officers are bound to support said Constitution.

The Petitioner further argues that the aforementioned Articles have not been amended and therefore cannot be violated by any of the states or any of its localities. What the Respondent is attempting to do is to create a new legal tender which is prohibited by Article I, Section 10 of the United States Constitution. The 10th Amendment to the U.S. Constitution reserves to the States powers not delegated to the United States by the Constitution, and not prohibited by it to the States. Thus, the power to make nothing but gold or silver Coin a Tender in Payment of Debts was retained by the states. Congress was given the power to coin money, borrow money, and to regulate the value thereof through

Article I; Section 8 of the Constitution. If the Petitioner was to concede that Congress is authorized to establish a national currency it would only apply to the United States Government and not the individual states.

Reference is made to the case of Gwin v. Breedlove 2 HOW. (43 U.S.) 29 (1844). Briefly, the facts are that Gwin, the United States Marshal, was instructed on an execution to collect gold or silver. He failed to do so, and took bank notes from the debtor and attempted to pay said notes to Breedlove, the judgment creditor, who refused same.

This Court through Mr. Justice Catron ruled that the United States Constitution recognized only gold or silver coin as legal tender and that "by the Writ of Execution the Marshal was commanded to collect so many dollars, this meant gold or silver of course..." The end result being that Gwin, the Marshal, accepted the notes at his own risk and must remit to Breedlove, the judgment creditor, gold or silver.

The other interesting fact alluded to in the Gwin v. Breedlove case, supra., is that the bank notes in question were at least for a period of time redeemable in gold or silver. As applied to the states under our currency system, a federal reserve note is redeemable for lawful money which is gold or silver coin. Thus, there is no law entitling a state to enforce payment in anything but gold or silver coin.

CONCLUSION

For the foregoing reasons, a Writ of Certiorari should issue to review the judgment of the Supreme Court of Virginia.

DATED: April 14, 1986

Raymond J. Morley Jr

Respectfully submitted,
PFITZNER & MORLEY
RAYMOND J. MORLEY, JR.
Counsel for Petitioners

APPENDICES

APPENDIX "A'

IN THE SUPREME COURT OF VIRGINIA

NICHOLAS G. COLLETTI — APPELLANT

AGAINST — RECORD NO. 850648
Circuit Court No. L155576

COUNTY OF PRINCE WILLIAM — APPELLEE

FROM THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

Upon review of the record in this case and consideration of the argument submitted in support of the granting of an appeal, the Court is of opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

A Copy,
Teste:

David B. Beach, Clerk
By:
Deputy Clerk

APPENDIX "B'

IN THE SUPREME COURT OF VIRGINIA

NICHOLAS G. COLLETTI
BARBARA COLLETTI — APPELLANTS

vs.

THE COUNTY OF PRINCE WILLIAM — APPELLEE

PETITION FOR APPEAL

RAYMOND J. MORLEY, JR.
PFITZNER & MORLEY
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Suite F
Woodbridge, Virginia 22191

COUNSEL FOR NICHOLAS G. COLLETTI
and
BARBARA COLLETTI

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NATURE OF THE CASE

Appellant was served with a Warrant In Debt on the issue of non-payment of Appellants 1983 Personal Property Taxes and trial was heard on December 4, 1984 in the Prince William County General District Court with judgment being rendered in favor of the Appellants. The matter was appealed to the Prince William County Circuit Court by the Appellee.

The matter was again tried in the aforesaid Circuit Court on march 26, 1985 wherein Appellant, Nicholas G. Colletti appeared for the Appellants and Mrs. Lyon, Cashier Supervisor appeared as a witness for the Appellee.

In this trial, judgment was rendered on May 22, 1985 in favor of the Appellee against the Appellants in the sum of Four Hundred Eighty-Nine Dollars and 65 cents ($489.65) plus penalty and interest as provided by law.

This appeal ensues as a result of that judgment order.

SUBJECT INDEX AND TABLE OF CITATIONS

(1) Table of Authorities

(a) United States Constitution.
Article I, Section 10

(b) Virginia Constitution.
Article X, Section 2

(c) Code of Virginia, 1950 as amended
Section 58.1-3503

(d) Virginia Citations.
American Viscose Corp. v. City of Roanoke, 205 V
1355 Ed 795 (1964)

STATEMENT OF QUESTIONS PRESENTED

The Questions presented for review are in order as they occurred at trial as follows:

1. Did the trial court err in granting the order appealed from when Section 58.1-3503 of the Code of Virginia was used as a basis for the Appellants 1983 personal property tax assessment when the aforesaid section was not effective until January 1, 1985?

2. Did the trial court err in granting the order appealed from due to the fact that the tax assessment in this cause was determined on a cost basis and the N.A.D.A. Official Used Car Guide with disclaimer which Appellants argue is in violation of Article X, Section 2 of the Constitution of Virginia?

3. Did the trial court err in granting the order appealed from due to the fact that the Appellee is requiring the Appellants to pay their personal property tax in something other than gold or silver coin which is in violation of Article 1; Section 10 of the United States Constitution?

4. Did the trial court err in correcting the written statement of facts pursuant to Rule 5:11 of the Rules of the Supreme Court of Virginia?

STATEMENT OF FACTS

Appellee, by counsel and Appellant, Nicholas G. Colletti, with counsel, appeared for trial upon the Warrant In Debt and Answer and Grounds of Defense filed in the Circuit Court of Prince William County on March 26, 1985 on the issue of non-payment of Appellants 1983 Personal Property taxes.

Appellant, Nicholas G. Colletti, appeared in the Circuit Court of Prince William County on March 26, 1985, and the Appellee through its witness, Mrs. Lyon, Cashier Supervisor, stated that she assessed the Appellants business personal property tax on a cost basis with a yearly percentage deduction for depreciation. Mrs. Lyon also stated that she assessed the Appellants automobiles using the N.A.D.A. Official Used Car Guide. In both assessments, Mrs. Lyon stated she used Section 58.1-3503 of the Code of Virginia in arriving at the assessments due. On cross-examination, Mrs. Lyon admitted that she did not assess any of the aforementioned property at its fair market value and that the N.A.D.A. Official Used Car Guide does not assume responsibility for its accuracy as to the value of data contained therein.

At the conclusion of the Appellee's case, the Appellants moved to strike Appellee's evidence on the following grounds, to-wit: 1) that Section 58.1-3503 of the Code of Virginia was not effective until January 1, 1985 and therefore could not be used on a basis for the Appellants 1983 tax assessments; and 2) that the cost basis and the disclaimer in the N.A.D.A. Official Used Car Guide violates Article X, Section 2 of the Constitution of Virginia which reads in part, "All assessments of real estate and tangible personal property shall be at their fair market value, to be ascertained and prescribed by law." Said motion was denied by the Court.

Appellant Nicholas G. Colletti, testified that he did not object to the payment of taxes but cited Article 1; Section 10 of the Constitution of the United States which reads in part, "No state shall...make any thing but gold or silver coin a tender in payment of debts..." The Ap-

pellant, Nicholas G. Colletti, further testified that the Federal Reserve Notes which are presently circulating as currency are not redeemable for gold or silver. Therefore, the Appellant, Nicholas G. Colletti, testified that he cannot pay his personal property tax assessment due to it being in conflict with Article 1; Section 10 of the Constitution of the United States.

At the conclusion of the case, Appellant, Nicholas G. Colletti, by counsel, renewed the Motion to Strike the evidence which was denied. Both counsel then made final argument and the Court entered the Judgment Order of May 22, 1985 which is a part of the record.

As a final point, Counsel for the Appellant, argues that the written statement of facts filed and made a part of the record should not have been corrected pursuant to Rule 5:11 or the Rules of the Supreme Court of Virginia.

Counsel for the Appellants excepted to the rulings of the court on the grounds that they were contrary to the Commonwealth of Virginia Constitution, the United States Constitution and the Code of Virginia, 1950 as amended.

ARGUMENT OF LAW

1. With respect to the first question presented, the Appellants argue that the order in the court below should not have been entered due to the fact that the Section 58.1-3503 was not effective until January 1, 1985 and therefore could not be used for a 1983 personal property tax assessment.

In support of this, the Appellant can only argue that the aforementioned dates speak for themselves.

2. With respect to the second question presented, the Appellants argue that the tax assessment in question violates Article X, Section 2 of the Constitution of Virginia in that the aforesaid assessments are not based on the fair market value of the business personal property in question. The Appellee's witness stated at trial that the assessment of the business personal property was based on cost with a yearly percentage deduction for depreciation.

The Appellants argue that the cost less depreciation concept of property has nothing to do with the fair market value as defined in the case of American Viscose Corp. v. City of Roanoke, 205 VA 192; 135 S.E. 2d 795 (1964) as follows, to-wit: Fair market value of property means "the price which it will bring when it is offered for sale by one who desires, but is not obligated to sell it, and is bought by one who is under no necessity of having it." The witness for the Appellee stated the cost less depreciation method was the only method used in arriving at the fair market value of the business personal property assessment. The Appellants argue that there was no physical inspection of the property in question or any inspection of other comparable property in which to arrive at fair market value.

With respect to assessment of the Appellants automobile, the use of the N.A.D.A. Official Used Car Guide as the basis for fair market value violates the aforesaid Article X; Section 2 of the Constitution of

Virginia. The Appellants argue in support of this the fact that the N.A.D.A. Official used Car Guide itself contains a disclaimer as follows, to-wit: "...the publisher does not assume responsibility for its accuracy."

The witness for the Appellee stated she knew of the aforementioned disclaimer or at least that she did not disagree with what the disclaimer stated.

With regards to both items of personal property in question (business personal property and automobiles) the witness for the Appellee stated she did not assess any of the aforementioned property at its fair market value.

The Appellants argue that a theoretical price is not fair market value and that the presumption of the correctiveness of the assessment should not apply in this case as there has not been a prima facie case for a fair market value assessment.

3. With respect to the third question presented, the Appellants argue that they are prevented from paying the tax assessment in question due to Article I, Section 10 of the United States Consitution which states in part, "no state shall...make any thing but gold and silver coin a tender in payment of debts..."

The Appellant argues that the aforesaid Article I, Section 10 of the United States Constitution has not been amended and is the supreme law of the land, which cannot be violated.

Furthermore, the Appellants do not wish to violate the law by violating the Constitution.

4. With respect to the fourth question presented, the Appellants argue that the Judge in the trial court lacks authority under Rule 5:11 or the Rules of the Supreme Court to correct the written statement of facts without notice to counsel and hearing. In this case the Appellants argue that there was no such notice and hearing.

CONCLUSION

In light of the errors committed in the trial court below and pursuant to the Statement of Questions presented in this appeal, the Appellants, Nicholas G. Colletti and Barbara Colletti pray that this Court reverse the judgment of the Court below and dismiss the Warrant In Debt in that cause.

Respectfully submitted
Nicholas G. Colletti and
Barbara Colletti
By Counsel

ORIGINAL SIGNED BY
RAYMOND J. MORLEY, JR.

RAYMOND J. MORLEY, JR.
4391 Davis Ford Road
Suites F&G
Woodbridge, Virginia 22192
Counsel for Appellants

CERTIFICATE PURSUANT TO RULE 5:17

I hereby certify the following information to be correct.

(A) The Appellant is Nicholas G. Colletti and Barbara Colletti who are represented by Raymond J. Morley, Jr., Pfitzner & Morley, Attorneys At Law, 4391 Davis Ford Road, Suites F&G, Woodbridge, Virginia 22192 (703) 590-3537

The Appellee is the County of Prince William, A Body Politic, who is represented by James B. Robeson, Esquire, Robeson, Murphy, Robeson and Van Doren, Attorneys At Law, (703) 361-6116

(B) There are no other parties either represented or not represented by counsel.

(C) Counsel for Appellant desires to state orally the reasons for the granting of petition either in person or by conference telephone call.

(D) A copy of this Petition for Appeal has been hand-delivered to James B. Robeson, Esquire, Robeson, Murphy, Robeson and Van Doren, Attorneys At Law, 9119 Church Street, Manassas, Virginia 22110 on this the 24th day of August, 1985.

ORIGINAL SIGNED BY
RAYMOND J. MORLEY, JR.

RAYMOND J. MORLEY, JR.
Counsel for Appellant

Proof of Service Pursuant to Rule 28

I hereby certify that on this 14th day of April, 1986, I have mailed, first class U.S. mail, postage prepaid three copies of this Petition for a Writ of Certiorari to the Supreme Court of Virginia pursuant to Rule 28 of the Rules of the Supreme Court of United States to James B. Robeson, Esquire, Robeson, Murphy, Robeson and Van Doren, Attorney's At Law, 9119 Church Street, Manassas, Virginia 22110, Counsel for the Respondent and that there are no other parties to this cause.

Raymond J. Morley, Jr.
RAYMOND J. MORLEY, JR.